

Department of the Army, DoD

§ 536.7

(iv) If the claim is for damage to property, or injury to person, consummated on land, a claimant who makes an oral inquiry or demand will be advised that no suit can be filed until a period of six months has expired after a claim in writing is submitted.

(v) If it is determined by the Commander, USARCS, that a claim, apparently maritime in nature, is not within the maritime jurisdiction, the claimant will be so advised, and the claim will be returned for processing under the appropriate section of this regulation.

(h) *By district or division engineer.* The district or division engineer area claims office will take the action of an initial claims authority. Files of unpaid claims should be forwarded directly to USARCS. An information copy will be sent to the next higher engineer authority unless such requirement is waived.

(i) *By higher settlement authority.* A higher claims settlement authority may take action with respect to a claim in the same manner as the initial claims office. However, if it is determined that any further attempt to settle the claim would be unwarranted, the claim will be forwarded to the Commander, USARCS, with recommendations.

§ 536.6 Determination of liability.

(a) In the adjudication of tort claims, the liability of the United States generally is determined in accordance with the law of the State or country where the act or omission occurred, except that any conflict between local law and the applicable United States statute will be resolved in favor of the latter. However, in claims by inhabitants of the United States arising in foreign countries, liability is determined in accordance with general principles of tort law common to the majority of American jurisdictions as evidenced by Federal case law and standard legal publications, except as it applies to absolute liability. Where liability is not clear or other issues exist, settlements should truly reflect the uncertainties in the adjudication of such issues. Compromise settlements are encouraged provided agreement can be reached that reflects the reduced

value of the damages as measured against the full value or range of value if such uncertainties or issues did not exist and were it possible for the claimant to successfully litigate the claim.

(b) *Quantum exclusion.* The costs of filing a claim and similar costs, for example, court costs, bail, interest, inconvenience expenses, or costs of long distance telephone calls or transportation in connection with the preparation of a claim, are not proper quantum elements and will not be allowed.

§ 536.7 Incident to service exclusionary rule.

(a) *General.* A claim for personal injury or death of a member of the Armed Forces of the United States or a civilian employee of the United States that accrued incident to his service is not payable under this regulation. A claim for property damage that accrued incident to the service of a member of the Armed Forces may be payable under 31 U.S.C. 3721 or §§ 536.20 through 536.35 depending on the facts.

(b) *Property damage claims.* A claim for damage to or loss of personal property of a claimant who is within one of the categories of proper party claimants under 31 U.S.C. 3721, which is otherwise cognizable under 31 U.S.C. 3721, must first be considered thereunder. If a claim is not clearly compensable under 31 U.S.C. 3721, and it arises incident to a noncombat activity of the DA or was caused by a negligent or wrongful act or omission of military personnel or civilian employees of the Department of Defense (DOD), it may be cognizable under either §§ 536.20 through 536.35 or § 536.50. The claim, if meritorious in fact, will probably be payable under one authorization or another regardless of whether the claim accrued incident to the service of the claimant.

(c) *Personal injury and death claims.* (1) Only after the death or personal injury (which is the subject of the claim) has been determined to have not been incurred incident to the member's service should §§ 536.20 through 536.35 and § 536.50 be studied to determine which, if either, provides a proper basis for settlement of the claim. In any event, the rule in *U.S. v. Brooks*, 176 F.2d 482 (4th Cir. 1949) requiring setoff of